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April 25, 2006

VIA ELECTRONIC FILING

Hon. Michael L. Orenstein, U.S.M.J.
United States District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, NY 11722-4438

Re: S&L Vitamins v. Australian Gold
05-CV-1217 (JS) (MLO)

Dear Magistrate Judge Orenstein:

We represent S & L Vitamins and Larry Sagarin in the above-captioned matter. We write in regard to the apparent crumbling of Australian Gold's "premier salons" edifice inserted belatedly into this case, including its failure to provide a list of "premier salons" as ordered by the Court.

As Your Honor will recall, at the last conference before the Court on March 31, 2006, defendant made much of its supposed "premier salon" agreements (which are not mentioned anywhere in its pleadings). In fact, the whole basis upon which third-party defendant Danny Sheehan was hauled into court was because of his alleged breach of a "premier salon" agreement. At that hearing, counsel for Mr. Sheehan stated that he had never seen a signed contract between Australian Gold and Mr. Sheehan. Australian Gold's counsel assured all present that, once released from the restrictions of the protective order, it would promptly secure the same from its client. To this date, however, no such contract – the basis of Australian Gold's entire lawsuit against Mr. Sheehan, the result of which was the immediate cutoff of Australian Gold products supplied to him – has been produced. The only thing that was secured from Australian Gold regarding Mr. Sheehan was that the company swiftly put him out of the Australian Gold business, and thereby eliminated an important and legitimate source of supply for our client.

Your Honor also ordered Australian Gold to turn over a list of the "premier salons" following the March 31 conference, pursuant to our request. As of April 17, 2006, the list had not been produced. On that date, we emailed counsel for Australian Gold and reminded him of his obligation to produce the list, and stated that given the time already elapsed that we expected to receive it by the close of business that day. We stated that absent the same we would consider the "premier salon" issue waived by Australian Gold and advise our client that, like any other person, it could purchase any manufacturer's tanning products from any tanning salons and do with it whatever it desired. Counsel for Australian Gold responded that his client intended no waiver and that he would supply the list by the following day. (See copy of April 17, 2006, emails attached hereto as Exhibit A.)

No list was ever produced, however, just as a signed Sheehan "premier salon" agreement with Australian Gold was never produced. Considering these failures nearly a month after Australian Gold placed so much weight, in open court, on the importance of these supposed exclusive agreements, it is tempting to describe the "premier salon" issue as a sham concocted by Australian Gold to shut down legitimate suppliers such as Mr. Sheehan. Our respect for the good faith and professionalism of our adversary counsel prevents us from doing so. Still, we are compelled to observe that plaintiff has from the beginning maintained that Australian Gold is using this litigation as a form of unfair competition in order to preserve control over the sale and distribution of its products. Australian Gold has failed to provide either a list of "premier salons" or a "premier salon" contract between it and Mr. Sheehan. Yet Australian Gold's outside counsel promptly used this Court's permission to identify Mr. Sheehan to Australian Gold who then immediately shut him down and eliminated our client's major supplier – precisely what a party using litigation as a form of competition would do.

On the basis of the foregoing, we ask the Court to rule that the "premier salon" issue has been waived by Australian Gold. We remain available at the Court's convenience should the Court have any questions concerning this submission.

Respectfully submitted,

Ronald D. Coleman

cc: Francis J. Earley, Esquire (via ECF)
Scott D. Matthews, Esquire (via ECF)

EXHIBIT A

Subject: RE: Australian Gold / S&L
From: "Matthews, Scott" <Scott.Matthews@icemiller.com>
Date: Mon, 17 Apr 2006 13:29:43 -0400
To: "Ronald D. Coleman" <rcoleman@coleman-firm.com>
CC: "David Stein" <DStein@coleman-firm.com>, "Earley, Frank" <FJEarley@mintz.com>

Ron:

I am out of the office this afternoon. I will send you the list of premiere salons tomorrow. Please do not assume that the "issue" has been waived.

Scott

-----Original Message-----
From: Ronald D. Coleman [mailto:rcoleman@coleman-firm.com]
Sent: Monday, April 17, 2006 12:49 PM
To: Matthews, Scott
Cc: 'David Stein'; 'Earley, Frank'
Subject: Australian Gold / S&L

Scott,

Several weeks after our colloquy with Judge Orenstein on this matter, I am not aware of any list of so-called premiere salons that has been provided to us. If this was already provided to us and escaped my notice I apologize but request, considering that David Stein is out of the office, that you resend it. Absent the same, we must have that list by the close of business today or we will assume that this "issue" has been waived by Australian Gold and that our client, like any other person, may purchase tanning lotion from any tanning salon and do as he likes with it.

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Add me to your address book... *Want a signature like this?*

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